

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
 UNITED ELECTRIC CO-OP, INC. AND THE )  
 EAST END MUTUAL ELECTRIC COMPANY, )  
 LTD FOR AN ORDER APPROVING A SERVICE )  
 TERRITORY AGREEMENT PURSUANT TO )  
 IDAHO CODE § 61-333(1). )**

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**CASE NO. GNR-E-03-4****ORDER NO. 29340**

On June 20, 2003, the United Electric Co-op, Inc. and East End Mutual Electric Company, Ltd. filed an Application for approval of their "Service Area Stabilization Agreement." This Agreement was entered into pursuant to the Electric Supplier Stabilization Act (ESSA) codified at *Idaho Code* §§ 61-332 *et seq.* United is the successor co-op entity following the consolidation of Rural Electric and Unity Light & Power.

In Order No. 29284 the Commission issued a Notice of Modified Procedure soliciting public comment on the Parties' Agreement. The Commission Staff submitted the only comment and recommended the Commission approve the Application. After reviewing the Application, Agreement and the Staff comments, we approve the Application.

**THE ESSA**

The purpose of the ESSA is to promote harmony among and between electric suppliers furnishing electricity within Idaho. More specifically, the ESSA: (1) prohibits the "pirating" of consumers already served by another supplier; (2) discourages duplication of electric facilities; (3) actively supervises certain conduct of electric suppliers; and (4) stabilizes the territories and consumers served by such electric suppliers. *Idaho Code* § 61-332. Under the ESSA, an "electric supplier" is any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer. *Idaho Code* § 61-332A(5).

*Idaho Code* § 61-333(1) provides that any electric supplier may contract with any other electric supplier for the purpose of "allocating territories, consumers, and future consumers . . . and designating which territories and consumers are to be served by which contracting electric supplier." Under the ESSA, all agreements or contracts for the allocation of service territories or consumers shall be filed with the Commission. This section further provides that the Commission may, after notice and opportunity for hearing, "approve or reject contracts

between municipalities and cooperatives. . . .” The Commission “shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of” the ESSA. *Id.*; *Idaho Code* § 61-334B.

### **THE APPLICATION**

The Parties state that they had a pre-existing oral agreement regarding the allocation of territories and customers. The Parties reduced their oral agreements to writing and executed their Stabilization Agreement on May 30, 2003. Each party is responsible for serving all new customers in their defined service areas. Exhibit 1 at ¶ 2. To the extent that either party is currently providing service to consumers within the service area assigned to the other party, the existing supplier shall continue to serve these pre-existing customers. *Id.* at ¶ 3; Exhibit 2.

The Agreement recognizes that United has a substation located in the East End service territory. The parties agree that United is entitled to leave “the substation in the East End territory without being in violation of the Agreement, provided however, United shall not expand its customer base in the East End territory.” *Id.* at ¶ 11.

The Parties assert that their Agreement comports with the purposes of the ESSA. More specifically, their Agreement provides for stability of services to consumers, eliminates duplication of facilities, and promotes the public safety in their respective service territories. Application at ¶ 3.

### **STAFF COMMENTS**

Staff recommended approval of the Agreement and made one observation. Staff asserted that the Agreement appears to provide the least cost service option for customers and complies with the ESSA by drawing boundaries that partially identify each supplier’s service territory. Staff also recognized that the Agreement provides that customers located in other supplier’s service territory may continue to be served by their existing supplier. *Id.* at ¶ 3; Exhibit 2.

Staff also addressed one other issue contained in paragraph 5 of the Agreement. This paragraph provides that the prevailing party in any legal action arising under the Agreement be entitled to recover reasonable attorney’s fees. Staff explained that prior to the amendments to the ESSA enacted in December 2000 and February 2001, *Idaho Code* § 61-334B provided that any supplier whose rights under the ESSA are in jeopardy, may bring suit in district court. *Idaho Code* § 61-334A now provides an aggrieved customer or supplier “may file a complaint with the

commission” and the Commission shall resolve the matter. *See Idaho Code* §§ 61-334A(2-3); 61-334B(3). In other words, the resolution of disputes was removed from the jurisdiction of the Courts and is to be submitted to the Commission. Under the Public Utilities Law, the Commission does not have authority to award attorney fees other than intervenor funding pursuant to *Idaho Code* § 61-617A.

### **FINDINGS**

Having reviewed the Parties’ “Service Area Stabilization Agreement” and the Staff’s supporting comments, we find it is reasonable to approve the Application and Agreement. More specifically, we find the Agreement is consistent with the purposes of the ESSA. In particular, we find that it promotes harmony among the electric suppliers, discourages duplication of facilities, and in particular, stabilizes the territories and consumers served by these two electric suppliers. We also note that there were no opposing comments.

Staff also made one other comment that merits discussion. Staff observed that paragraph 5 of the Agreement provides that the prevailing party in any legal action is entitled to recover reasonable “attorney fees and costs.” As Staff noted, the 2000 and 2001 amendments to the ESSA remove resolution of ESSA disputes from the district courts and authorizes the Commission to resolve these disputes. *See Idaho Code* § 61-334A. Without reforming the contract, we note that the Commission does not have authority to award attorney fees other than as provided by *Idaho Code* § 61-617A.

### **ORDER**

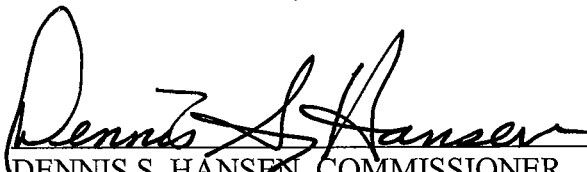
IT IS HEREBY ORDERED that the Application filed by United Electric Co-op and East End Mutual Electric Company to approve a “Service Area Stabilization Agreement” dated May 30, 2003, is approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-E-03-4 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-E-03-4. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* §§ 61-626, 61-334B(3).

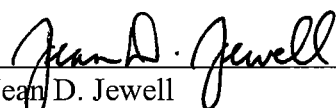
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this <sup>October</sup> 8<sup>th</sup>  
day of ~~September~~ 2003.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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